Supreme Court, U.S.
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No. 95-1041

In The

Supreme Court of the United States

October Term, 1995

ARACELI REYES, SYLVIA GARZA, JOSE DE LEON, AND DOLORES SALINAS,

Petitioners,

vs.

ROBERTO LUGO,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether in a 42 U.S.C. §1983 suit against public officials in their private or individual capacity, the Fifth Circuit has abolished the heightened pleading standard.

PARTIES TO THE PROCEEDING

(Respondent is not dissatisfied with those of the petitioner.)

TO THE UNITED STATES SUPREME COURT:

Respondent Roberto Lugo respectfully requests that this Court deny the petition for writ of certiorari which seeks review of the Fifth Circuit's opinion below. That opinion is an unpublished opinion but is reprinted in the petition for certiorari at Appendix A.

OPINIONS BELOW

(Respondent is not dissatisfied with that stated by the petitioner.)

STATEMENT OF JURISDICTION

(Respondent is not dissatisfied with that stated by the petitioner.)

CONSTITUTIONAL AND STATUTORY PROVISIONS

(Respondent is not dissatisfied with that stated by the petitioner.)

STATEMENT OF THE CASE

(Not needed.)

REASONS FOR DENYING THEWRIT

I.

THE FIFTH CIRCUIT'S OPINION IS SUBSTANTIVELY IN HARMONY WITH OTHER CIRCUITS.

Petitioners argue that the Fifth Circuit's decision "in effect abolishes the heightened pleading standard long recognized in federal civil rights cases" and is therefore "in direct conflict with every federal circuit court that has addressed the heightened pleading standard". In so arguing, petitioners obviously interpret the Fifth's Circuit holding in *Schultea v. Wood,* 47 F.3d 1427 (5th Cir. 1995) (en banc) as so holding.

Petitioners have misinterpreted *Schultea.* A closer reading of this case reveals that the Fifth Circuit has not abandoned a heightened pleading standard. As the Fifth Circuit stated, "we stand by our insistence that complaints plead more than conclusions". *Schultea,* 47 F.3d 1427 at 1430.

The Fifth Circuit did not abolish the heightened pleading standard but instead only affected the order in which the plaintiff must so plead. As the court stated, "we will no longer insist that plaintiff fully anticipate the defense (of qualified immunity) in his complaint". *Id.* However, the court continues, "a plaintiff can, at the pleading stage, be required to engage the affirmative defense of qualified immunity when invoked". *Id.*

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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